STATE OF MICHIGAN

COURT OF APPEALS

JH CAMPBELL, INC., Petitioner-Appellant,	UNPUBLISHED March 8, 2011
v	No. 295455
TOWNSHIP OF DEXTER, Respondent-Appellee.	LC Nos. 00-341575; 00-341710; 00-341715; 00-341716; 00-341717; 00-354969; 00-354970; 00-354971; 00-354972; 00-354973

Before: FITZGERALD, P..J., and O'CONNELL and METER, JJ.

PER CURIAM.

Petitioner appeals as of right the November 18, 2009, order of the Tax Tribunal, which affirmed the taxable value calculations for the years 2007 and 2008. We affirm.

Petitioner's appeal is based on the underlying premise that the additions to the 2004 taxable values of its real property were unconstitutional and thus, its 2007 and 2008 taxable values should be lowered as a result of the error. The Court in *Toll Northville, Ltd v Northville*, 480 Mich 6, 16; 743 NW2d 902 (2008), found that MCL 211.34d(1)(b)(*viii*), which was the statute on which additions were added to taxable values, was unconstitutional. Defendant subsequently challenged its 2007 and 2008 taxable values.

We conclude that the Tax Tribunal did not obtain jurisdiction to review the 2004 taxable values when petitioner challenged the 2007 and 2008 values. As stated by the Court in *Wayne Co v Mich State Tax Comm*, 261 Mich App 174, 186-187; 682 NW2d 100 (2004):

> When fraud is not alleged, appellate courts are limited in their review of [Michigan Tax Tribunal] decisions to determining whether the tribunal made an error of law or adopted a wrong principle. All factual findings are final if supported by competent, material, and substantial evidence. Substantial evidence is the amount of evidence that a reasonable person would accept as being sufficient to support a conclusion; it may be substantially less than a preponderance of the evidence. [Citations omitted.]

The Tax Tribunal did not have jurisdiction to make changes to the 2007 and 2008 taxable values when those changes were initially reflected in 2004 and the time for filing a timely appeal with the Tax Tribunal based on the 2004 taxable values had long passed. MCL 205.735a(1), (3). We base this conclusion on our review of this Court's decisions in *Leahy v Orion Twp*, 269 Mich

App 527, 528; 711 NW2d 438 (2006), and *Springhill Assoc, Ltd Partnership #2 v Shelby Twp*, unpublished opinion per curiam of the Court of Appeals, issued December 11, 2003 (Docket No. 247100). Contrary to petitioner's argument, the *Springhill* decision is persuasive and applicable authority. See *Steele v Dep't of Corrections*, 215 Mich App 710, 714 n 2; 546 NW2d 725 (1996). In fact, we have previously cited *Springhill* as persuasive authority. *Toll Northville, Ltd v Northville Township*, 272 Mich App 352, 360; 726 NW2d 57 (2006), vacated in part on other grounds 480 Mich 6 (2008).

Springhill involved whether the Tax Tribunal had jurisdiction to examine changes to taxable value that occurred in a previous year, which is the same issue involved in the case at bar. *Id*. Hence, although the Tax Tribunal lacks jurisdiction to decide constitutional questions, collateral estoppel nevertheless bars petitioner's claim in this case. *WPW Acquisition Co v City of Troy (On Remand)*, 254 Mich App 6, 8; 656 NW2d 881 (2002) (tax tribunal lacks jurisdiction to decide constitutional questions); *Leahy*, 269 Mich App at 530-531 (collateral estoppel); *Springhill*, slip op at 3-4. Moreover, no authority is cited by petitioner supporting the proposition that the Tax Tribunal has authority to examine taxable values when a provision that affected taxable values was subsequently deemed unconstitutional. Consequently, we conclude that petitioner has not demonstrated that the Tax Tribunal "made an error of law or adopted a wrong principle" with respect to the years on appeal in this case. *Wayne Co*, 261 Mich App at 186.

We note that respondent argues that the claimed improvements were made to privately owned condominium units. Respondent did not raise this issue in the lower court. Hence, it is not properly preserved. *Polkton Charter Twp v Pellegrom*, 265 Mich App 88, 95; 693 NW2d 170 (2005). Moreover, given our ruling regarding jurisdiction, it is unnecessary to address this issue.

Petitioner also argues that the decision of the Court in *Toll Northville*, 272 Mich App at 357, which provided that public service improvements were not additions to property, resulted in the public service improvements constituting a loss of property, which can be removed from the taxable values pursuant to MCL 211.34d(1)(h)(*i*). Here, the access road never should have been considered when the property was assessed. MCL 211.7e(2); *Toll Northville*, 272 Mich App at 370. Hence, the access road was never property of the owner of the land, which was "removed." MCL 211.34d(1)(h)(*i*). In addition, the other public service improvements were the personal property of the utility company. *Toll Northville*, 480 Mich at 15 n 2. Thus, these improvements would not be considered property of the owner of the property, which would be subject to removal. *Id.*; *Toll Northville*, 272 Mich App at 370-371. Moreover, petitioner does not cite any authority to support its proposition that when a statute adding improvements to taxable value is subsequently determined to be unconstitutional, those additions can be removed from taxable value as a loss pursuant to MCL 211.34d(1)(h)(*i*). See *Davenport v Grosse Pointe Farms Bd of Zoning Appeals*, 210 Mich App 400, 405; 534 NW2d 143 (1995) (This Court will not search for authority to sustain or reject a party's position). Based on the foregoing, petitioner's argument

that the access road and other public service improvements can be removed from the taxable values as a loss pursuant to MCL 211.34d(1)(h)(*i*), is without merit.

Petitioner also argues that the Tax Tribunal has statutory authority to correct the error in the 2004 taxable value under MCL 211.53a and MCL 211.53b(8)(d)(*i*) and (*ii*).[1] We conclude that because there was no clerical error or mutual mistake of fact, but rather a subsequent finding that a statutory provision was unconstitutional, the Tax Tribunal lacked jurisdiction to revisit the taxable value computations that occurred in 2004, under MCL 211.53a, which pertains only to clerical errors and mutual mistakes. *Leahy*, 269 Mich App at 529, 532. In addition, with regard to petitioner's assertions under MCL 211.53b(8)(d)(*i*) and (*ii*), MCL 211.53b(1) specifically provides that, except for situations not applicable here, "a correction under this subsection may be made in the year in which the qualified error was made or in the following year only."[2] Because any error to the components or inclusion of real property occurred in 2004, petitioner would have only been entitled to relief in the 2004 and 2005 tax years, not the 2007 and 2008 tax years, which are the years that are the subject of this appeal. MCL 211.53b(1). Hence, MCL 211.53b(8)(d)(*i*) and (*ii*) do not provide the Tax Tribunal with statutory authority to correct the error.

Affirmed.

/s/ E. Thomas Fitzgerald
/s/ Peter D. O'Connell
/s/ Patrick M. Meter

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[1] Our Legislature has amended MCL 211.53b(8) and recodified subsections 8(d)(*i*) and (*ii*) as subsections 8(d) and (e), respectively. 2010 PA 24.

[2] Our Legislature has also amended MCL 211.53b(1), rewriting the last sentence to read "a correction under this subsection may be made for the current year and the immediately preceding year only." 2010 PA 24. The amendment does not alter the result in this case.